

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. #0304012678
)	
DARIUS D. BROADNAX,)	
)	
Defendant)	
)	

Submitted: April 12, 2006
Decided: June 14, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Maria T. Knoll, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Darius D. Broadnax, Smyrna, Delaware, *pro se*.

COOCH, J.

This 14th day of June, 2006, upon consideration of Defendant's
motion for postconviction relief, it appears to the Court that:

1. Darius D. Broadnax ("Defendant") was found guilty and convicted,
after a jury trial that began on July 7, 2004, and ended on July 15, 2004, of
Murder Second Degree (as a lesser included offense to Murder First Degree)

and Possession of a Deadly Weapon During the Commission of a Felony.

On September 10, 2004, Defendant was sentenced to a total of 20 years at Level V, followed by 4 years at decreasing levels of supervision.

Defendant's trial counsel filed a brief and motion to withdraw in the Delaware Supreme Court pursuant to Supreme Court Rule 26(c), in which counsel represented that there were no arguably appealable issues.¹

Defendant failed to raise any appealable issues on his own behalf.² On March 22, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on April 12, 2006. Defendant sets forth three claims of ineffective assistance of counsel in support of his motion. Defendant sets forth three claims in the form motion alleging that defense counsel was ineffective, which are set forth *in toto*:

1. Trial counsel was ineffective by failing to suppress any pretrial statement made by a three way phone call. The State failed to prove a phone call. That was made by the Defendant to Syrita and Arlanda on three way phone call [sic].

2. Trial counsel was ineffective for failing to objection [sic]. All statements by Shavonti Hale was hearsay [sic], and none of Ms. Shavonti Hale statement was not being objection [sic] by trial counsel at trial such as they need to be.

¹ *Broadnax v. State*, 2005 WL 678006 (Del. Supr.).

² *Id.* at *1.

³ *Id.* (affirming convictions after having “reviewed the record carefully and [concluding] that [Defendant’s] appeal is wholly without merit and devoid of any appealable issue”).

3. Trial counsel was ineffective for failing to object [sic]. The prosecution leading the state witness Ms. Arlanda Matteaus no objection [sic] by trial counsel and also Mr. James A Broadnax right to not to testify [sic].

Immediately below those grounds in the form motion Defendant had also written, in response to whether any of the grounds listed had been previously raised, “This is my first postconviction motion.” Also, in a handwritten attachment to the form motion for postconviction relief, Defendant alleged the following:

Claims Attacking Mr. Broadnax’s 2003 Conviction and Sentences

1. This Sixth Amendment guarantees the right to effective assistance of counsel in any criminal prosecution of counsel [sic]. Mr. Broadnax on trial for murder in the First Degree and Possession of a Deadly Weapon During the commission of a felony was denied that right. In order to establish such a claim one must sho [sic] that (A) counsel performance fell below an objective standard of reasonableness and (B) counsel deficient performance deprived the Defendant of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In order to establish prejudice a defendant must show that there is a reasonable probability that but for counsel error’s [sic] the out come would have been different. Strickland, 466, at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. Allegations of ineffective counsel must be viewed as a whole rather than [sic] in piecemeal fashion. See: Frey v. Fulcomer, 974 F.2d 348, 368 n.12 (3d. Cir. 1992) cert. denied 113 S. Ct. 1368 (1993) (The prejudice question under Strickland is whether all of counsel’s unprofessional errors combined undermine our confidence in the result) (emphasis in original) Foster v. Deio, 11 F.3d 1451, 1457 (8th Cir. 1993).

2. This case turned solely upon the testimony’s [sic] of Ms. Arlanda Matthews (story). However, also the identification of the perpetrator in the second incident.

Ineffectiveness of Counsel:

(1) Trial counsel failed to properly investigate Mr. Broadnax story [sic],
(2) Trial counsel failed to effectively community [sic] with Mr. Broadnax prior to trial, failed to keep him apprise [sic] of the status of the case, and

never visited him about any issue Mr. Broadnax want to bring up his self [sic] to the appeal he was filed for Mr. Broadnax [sic]. Trial Counsel failed to ask Mr. Broadnax do he have [sic] any issue he want to bring up for his appeal process at all.⁴

Upon review of Defendant's motion, all of the above grounds are conclusory and, thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified." Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁵

4. Although Defendant sets forth the legal standard for a claim of ineffective assistance of counsel,⁶ he fails to offer any facts to support his contentions. Defendant merely makes blanket allegations of ineffective assistance of counsel. He does not create any factual basis for any of his

⁴ Def.'s Mot. for Postconviction Relief 3, 4.

⁵ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). *See also Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

⁶ Def.'s Mot. for Postconviction Relief 3, 4.

claims. Thus, Defendant's first three claims of ineffective assistance of counsel are conclusory and, thus, are **SUMMARILY DISMISSED**.

5. As to Defendant's final claim that defense counsel did not inquire about issues that Defendant wanted to include in a direct appeal, the record is clear that defense counsel submitted a statement that complied with Supreme Court Rule 26(c), which "[a]dvised the client that the client could state in a writing, delivered to the attorney within 30 days, any point that the client wanted the Court to consider, and that such a writing would be included in the [Rule 26(c)] brief."⁷ Further, Defendant's allegation that defense counsel never visited him prior to trial is completely conclusory. Therefore, Defendant's additional claim of ineffective assistance of counsel is meritless and conclusory and, thus, is **SUMMARILY DISMISSED**.

6. For the reasons stated, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
Christopher D. Tease, Esquire

⁷ Supr. Ct. R. 26(c)(ii)(B). *See also* Letter to Defendant from Christopher D. Tease, Esq. (Jan. 15, 2005).